Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket 92-235

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To: The Commission

COMMENTS OF SPACELABS MEDICAL, INC.

SpaceLabs Medical, Inc. ("SpaceLabs") hereby submits its comments on the Further Notice of Proposed Rulemaking ("FNRPM"), issued in the above-captioned proceeding.[1/]

I. SPACELABS' INTEREST IN THE PROCEEDING.

SpaceLabs has filed extensive comments and reply comments in the proceedings leading up to the adoption of the FNPRM. In its comments, SpaceLabs detailed the substantial adverse consequences for wireless electrocardiogram ("ECG") monitoring systems that would have resulted from the adoption of certain of the then-pending "refarming" proposals, including those intended to create incentives for spectrum efficiency. The regulatory changes that the Commission now proposes in the FNPRM to introduce market-based incentives for efficiency, while different in

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1/ Report and Order and Further Notice of Proposed Rulemaking, PR Docket No. 92-235, FCC 95-255 (June 23, 1995), ¶¶ 110-148 ("FNPRM").

some respects from those proposed in the Notice of Proposed Rulemaking ("NPRM"),[2/] may have an equally adverse impact.

Recently, SpaceLabs filed a Petition for Reconsideration and/or Clarification ("Petition") of the new Part 90 rules adopted by the Commission in the above-captioned proceeding.[3/] In its Petition, SpaceLabs requested that the Commission take steps to ensure the availability of an adequate amount of spectrum for use by biomedical telemetry devices on a primary basis.[4/] Accommodation of biomedical telemetry operations in this way will remove many of SpaceLab's concerns regarding the FNPRM proposals.

II. IMPACT OF THE PROPOSALS.

In its comments and reply comments in this docket, SpaceLabs detailed: (1) the essential nature and purpose of biomedical telemetry;[5/] (2) the strict operational requirements of these systems;[6/] and (3) the reasonably

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2/ Notice of Proposed Rulemaking, 7 FCC Rcd 8105 (1992) ("NPRM").

3/ Report and Order and Further Notice of Proposed Rulemaking, PR Docket No. 92-235, FCC 95-255 (June 23, 1995), ¶¶ 1-109 ("Report and Order").

4/ Currently, such services operate on a secondary basis under Part 90, on certain of the offset channels in the 450-470 MHZ band.

5/ See SpaceLabs Comments at 3 (filed May 28, 1993).

6/ Id. at 5.

anticipated future needs of the healthcare industry for expanded use of such systems.[7/]

In general, SpaceLabs demonstrated that wireless ECG monitoring systems have come to be considered as essential equipment in practically every hospital, providing both healthcare professionals and patients with vastly increased flexibility. Except for circumstances in which the patient is nonambulatory, it is easier, and far more cost-effective, to employ portable ECG units. More importantly, the portable units permit ambulatory patients a great deal of freedom of movement, an aspect of the recovery process that has become increasingly important in the judgment of the medical profession.

A. The Commission Must Take The Lead In Establishing A "Safe Harbor" for Biomedical Telemetry.

In its Petition, SpaceLabs provided the outline of a regulatory structure that could accommodate biomedical telemetry services. Working in concert with Hewlett-Packard Medical Products Group ("HP"), another leading telemetry manufacturer, SpaceLabs also has attempted to open a dialog with the various coordinators whom the Commission had tasked with consolidating a number of the existing services. HP and SpaceLabs had devised a proposal to accommodate

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7/ Id. at 8; SpaceLabs Reply Comments at 3 (filed July 30, 1993).

telemetry operations that was submitted to the coordinators to consider as part of their overall consolidation plan.

It is SpaceLabs' understanding that the coordinators' effort has not made any appreciable progress. As a further incentive to the relevant parties, SpaceLabs suggests that the Commission initiate a formal negotiated rulemaking process, including therein a mandate to accommodate the needs of biomedical telemetry users. In the absence of some sort of special provision for these vital healthcare services, the Commission's adoption of the incentives to maximize spectrum use identified in the FNPRM most likely will ensure that these essential medical operations will be driven from the 450-470 MHZ band.

B. Biomedical Telemetry Must Be Accommodated On Channels Not Subject To "Shared Exclusivity".

Biomedical telemetry must be fully accommodated on channels not subject to the Commission's "shared exclusivity" proposal, and must not be put in a position where they need to seek channels made exclusive under the proposed rules. Because the exclusive licensee can charge far more to a user seeking wide-area, high-power coverage, it is likely that no such channels will be made available to low power users. If channels are made available by exclusive licensees, they will be offered at a price high enough to offset the revenue loss from having to protect telemetry users from both co-channel and adjacent channel

interference from high power systems. Neither alternative is acceptable under any rational definition of the public interest, given the vital medical services provided by biomedical telemetry and the intense national effort to reduce healthcare costs.

For these reasons, SpaceLabs urges the Commission to accommodate medical telemetry on a primary basis in a separate, frequency-coordinated block of spectrum not subject to the proposed "shared exclusivity" plan.

C. Biomedical Telemetry Users Should Not Be Subject To User Fees Or Competitive Bidding.

Biomedical telemetry users should not be subject to user fees. The imposition of such costs would preclude the use of such services in many hospitals, and raise the costs of medical care in others. Neither result is in the public interest.

For the same reason, low power licenses for biomedical telemetry use should not be assigned by competitive bidding.[8/] Moreover, it is unlikely that two health care facilities would file mutually exclusive applications, given the exceedingly low powers involved (e.g., less than 5 mW);

8/ It would be particularly unconscionable and irrational to require hospitals to pay user fees or bid at auction in the absence of some relief from the current secondary status of telemetry operations. Even if the relief sought in SpaceLabs' Petition were granted, and telemetry users attained primary status, however, the overall public interest militates strongly against the imposition of any requirement that would lead to higher healthcare costs.

indeed, telemetry signals generally do not even penetrate the exterior hospital walls at an appreciable level. Thus, an auction would not be needed in any event.

Finally, to force a hospital seeking a license for a 5 mW system to compete at auction against a typical high-power private radio user is to guarantee that the hospital will lose. The economics of this case are no different than in the "exclusive use" scenario discussed above. In this regard, the Report of the House Committee on the Budget on the Seven-Year Balanced Budget Reconciliation Act of 1995, H.R. 2491, is highly instructive. While proposing to expand the Commission's auction authority as part of the 1995 budget reconciliation process, the Committee specifically charged the Commission with continuing to meet "its obligation under section 309(j)(6)(E) to take actions necessary to avoid situations of mutual exclusivity. An example is the 450-470 MHz band, which is shared by low-powered medical telemetry devices."[9/] Put simply, auctions are an inappropriate mechanism through which to award biomedical telemetry licenses.

9/ H.R. Rep. No. 280, 104th Cong., 1st Sess. 228 (1995).

CONCLUSION

Based on the foregoing, SpaceLabs requests that the Commission provide the regulatory relief needed to ensure the long-term viability of wireless biomedical telemetry.

Respectfully submitted,

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